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SERVICE DATE - MAY 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33729 (Sub No. 1)

UNION PACIFIC RAILROAD COMPANY--TRACKAGE RIGHTS EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: May 6, 1999

By petition filed March 19, 1999, Union Pacific Railroad Company (UP or petitioner) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 33729¹ to extend only until July 31, 1999.

According to petitioner, the trackage rights arrangement exempted in STB Finance Docket No. 33729 is necessary because UP will be performing maintenance work on its rail lines in the geographic region and UP will utilize the trackage rights over BNSF's line as an alternate route for UP's traffic during that time. However, petitioner states that BNSF is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on UP's trackage. Petitioner further states that operating crew constraints on BNSF dictate that UP's operations over BNSF's trackage be handled as trackage rights rather than as a detour arrangement. Petitioner maintains that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

Although the parties have expressly agreed on the terms of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See The Burlington

¹ On March 19, 1999, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over 350.4 miles of BNSF's rail line between (1) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and Jonesboro, AR, BNSF milepost 420.0 (Thayer South Subdivision), via Turrell, AR, BNSF milepost 282.3 (River Subdivision), and (2) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and KC Junction, TN, BNSF milepost 486.0 (Thayer South Subdivision). See Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33729 (STB served Apr. 8, 1999). The trackage rights agreement is scheduled to expire July 31, 1999. The trackage rights operations under the exemption became effective on April 1, 1999, and are subject to standard labor protective conditions.

STB Finance Docket No. 33729 (Sub-No. 1)

Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999); Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33631 (Sub-No. 1) (STB served July 30, 1998); and The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, STB Finance Docket No. 33612 (Sub-No. 1) (STB served July 1, 1998).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 33729 to expire on July 31, 1999.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 33729, as discussed above, to permit the trackage rights to expire on July 31, 1999.
2. Notice will be published in the Federal Register on May 13, 1999.
3. This decision is effective on June 12, 1999.
4. Petitions to reopen must be filed by June 2, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary